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State v. Carter Appellant's Brief Dckt. 43524

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NO. 43524
)	
v.)	ADA COUNTY NO. CR 2015-5353
)	
GARY WAYNE CARTER,)	
)	
Defendant-Appellant.)	APPELLANT'S BRIEF
_____)	

STATEMENT OF THE CASE

Nature of the Case

Gary Wayne Carter pled guilty to possession of a controlled substance with the intent to deliver, witness intimidation, and unlawful possession of a firearm, and was sentenced to an aggregate unified term of fifteen years, with four years fixed. He contends the district court abused its discretion because the sentence it imposed was excessive considering the mitigating factors that exist in this case.

Statement of Facts and Course of Proceedings

On April 13, 2015, Mr. Carter was arrested after being seen inside a vehicle that was the subject of police surveillance, and after a police search of the vehicle disclosed

illegal drugs. (Presentence Investigation Report (“PSI”), pp.3-4.) Police reports reveal that Mr. Carter was fighting with the owner of the vehicle, which had been reported as stolen, because he did not believe he should have to pay for the vehicle due to transmission problems. (PSI, p.4.) A search of Mr. Carter’s hotel room revealed a semiautomatic handgun; a substance which appeared to be either marijuana or spice; and several laptop computers, tablets and cell phones which had been reported as stolen. (PSI, p.4.) While incarcerated in the Ada County Jail, Mr. Carter made several phone calls in which he attempted to prevent his girlfriend (his wife, at the time of sentencing) from coming to court. (PSI, p.5.; Tr., p.32, Ls.15-22.)

Mr. Carter was charged by Information with four counts of possession of a controlled substance with the intent to deliver; one count of intimidating, impeding, influencing, or preventing the attendance of a witness; one count of unlawful possession of a firearm; one count of possession of drug paraphernalia; and one count of petit theft by possession of stolen property. (R., pp.28-31.) Mr. Carter pled guilty to one count of possession with intent to deliver, one count of witness intimidation, and one count of unlawful possession of a firearm. (R., p.40.) The remaining counts were dismissed. (R., p.52.) The district court sentenced Mr. Carter to an aggregate unified term of fifteen years, with four years fixed.¹ (R., p.53.) The judgment was entered on August 14,

¹ The district court sentenced Mr. Carter to a term of five years, with four years fixed, on the possession count; an indeterminate term of five years on the witness intimidation count; and an indeterminate term of five years on the firearm count, with all counts to be served consecutively. (R., p.53.)

2015. (R., pp.51-55.) Mr. Carter filed a timely notice of appeal on August 17, 2015.²
(R., pp.57-59.)

ISSUE

Did the district court abuse its discretion when it imposed upon Mr. Carter an aggregate unified sentence of fifteen years, with four years fixed?

ARGUMENT

The District Court Abused Its Discretion When It Imposed Upon Mr. Carter An Aggregate Unified Sentence Of Fifteen Years, With Four Years Fixed

Mr. Carter asserts that, given any view of the facts, his unified sentence of fifteen years, with four years fixed, is excessive. Where, as here, the sentence imposed by the district court is within statutory limits, “the appellant bears the burden of demonstrating that it is a clear abuse of discretion.” *State v. Miller*, 151 Idaho 828, 834 (2011) (quoting *State v. Windom*, 150 Idaho 873, 875 (2011)). “When a trial court exercises its discretion in sentencing, ‘the most fundamental requirement is reasonableness.’” *Id.* (quoting *State v. Hooper*, 119 Idaho 606, 608 (1991)). “A sentence is reasonable if it appears necessary to accomplish the primary objective of protecting society and to achieve any or all of the related goals of deterrence, rehabilitation or retribution.” *Id.* (citation omitted). “When reviewing the reasonableness of a sentence this Court will make an independent examination of the record, ‘having regard to the nature of the

² Mr. Carter filed a motion for pursuant to Idaho Criminal Rule 35 (“Rule 35”) for reconsideration of sentence on November 2, 2015. The district court denied the motion on March 3, 2016, following a hearing. Mr. Carter does not challenge the district court’s denial of his Rule 35 motion in light of *State v. Huffman*, 144 Idaho 201, 203 (2007).

offense, the character of the offender and the protection of the public interest.” *Id.* (quoting *State v. Shideler*, 103 Idaho 593, 594 (1982)).

The sentence imposed on Mr. Carter by the district court was not reasonable because it was not necessary to protect society or achieve the goals of deterrence, rehabilitation or retribution. The first factor for this Court to independently examine is the nature of the offense. See *Miller*, 151 Idaho at 835. Mr. Carter pled guilty to three offenses, including witness intimidation, and was sentenced to an indeterminate term of five years for that offense. (R., p.53.) Mr. Carter admitted at sentencing that, immediately after his arrest, he made a telephone call discouraging his girlfriend from coming to court. (Tr., p.36, L.23 – p.37, L.4.) However, he explained that he was under the influence of drugs at the time, and, after he was sober, told his girlfriend to come to court. (Tr., p.36, L.23 – p.37, L.4.) This is a factor the district court should have considered. See *State v. Osborn*, 102 Idaho 405, 414, n.5 (1981) (noting that “[w]hile the ingestion of drugs or alcohol by appellant on the evening of the offense is not sufficient in itself to raise a defense to the crime, it is our conclusion that any arguable impact of such substance abuse is a proper consideration in mitigation of punishment upon sentencing”). Moreover, Mr. Carter’s girlfriend suffered no harm and had no hard feelings towards Mr. Carter as a result of this offense, as evidenced by the fact that she married Mr. Carter prior to his sentencing. (Tr., p.37, Ls.4-6.)

The second factor for this Court to independently examine is the character of the offender. See *Miller*, 151 Idaho at 835. Mr. Carter experienced a traumatic childhood. He never met his biological father, who was and remains incarcerated for murder, and was subjected to physical and mental abuse from an alcoholic stepfather. (PSI, p.24.)

Mr. Carter dropped out of school in the eighth or ninth grade and began using drugs at the age of fifteen or sixteen. (PSI, pp.24, 26, 31, 39.) Mr. Carter has struggled with addiction ever since, and describes himself as a “long time addict” who has never received any addiction treatment. (PSI, pp.6, 24.) Mr. Carter’s mother describes him as “a wonderful person” with “a big heart” who “needs some sort of rehabilitation . . . to understand the cause of his problems.” (PSI, pp.24-25, 36.) Though Mr. Carter has been incarcerated before, he has never received substance abuse treatment, and desperately wants such treatment. (PSI, pp.25, 30; Tr., p.35, Ls.2-12.)

Mr. Carter came to Idaho to work in construction, and was employed as a laborer at the time of his arrest. (PSI, p.27; Tr. p.36, Ls.11-13.) He was sober from 2010 until his relocation to Idaho, but experienced a relapse here in Idaho, and was regularly using spice, bath salts, marijuana, methamphetamine, and alcohol at the time of his arrest. (PSI, pp.30, 34, 39.) Mr. Carter informed the presentence investigator that he is “willing to do whatever it takes to stay off drugs, not break the law, and be a family man.” (PSI, p.31.) Although Mr. Carter’s substance use is not a defense to his crimes, it should have been considered as a mitigating factor resulting in a lesser sentence. See *Osborn*, 102 Idaho at 414, n.5.

The third factor for this Court to independently examine is the protection of the public interest. See *Miller*, 151 Idaho at 835. Though Mr. Carter has a lengthy criminal record, his offenses, including the instant offenses, are largely non-violent, and reflect his problems with drug addiction more than anything else. (Tr. p.37, Ls.14-15.) Mr. Carter describes his criminal record as that of an “addict who has never had any help or treatment.” (PSI, p.31.) This characterization is accurate, and is reflected in the

recommendation of the presentence investigator, who stated that Mr. Carter “needs a very structured environment where there is strict rule enforcement and regular treatment for . . . substance abuse and dependency issues.” (PSI, p.34.)

Mr. Carter’s offenses are deserving of punishment, but in light of the mitigating factors that exist, they do not warrant the sentence imposed, and the district court abused its discretion in imposing such a sentence.

CONCLUSION

Mr. Carter respectfully requests that the Court reduce his sentence as it deems appropriate. Alternatively, he requests that this case be remanded to the district court for a new sentencing hearing.

DATED this 14th day of March, 2016.

_____/s/_____
ANDREA W. REYNOLDS
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 14th day of March, 2016, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

GARY WAYNE CARTER
INMATE #116242
SICI
PO BOX 8509
BOISE ID 83707

TIMOTHY HANSEN
DISTRICT COURT JUDGE
EMAILED BRIEF

DAVID A STEWART
ADA COUNTY PUBLIC DEFENDER
EMAILED BRIEF

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DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
EMAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

AWR/eas